

BILL ANALYSIS

Analyst: Deborah Barrett
Work Phone: 845-4301

| | | |
|----------------------------------|------------|-------------|
| Department, Board, Or Commission | Author | Bill Number |
| Franchise Tax Board | Richardson | AB 1199 |

SUBJECT

Aggravated White Collar Crime Enhancement/Fraud Or Embezzlement

SUMMARY

This bill would apply existing provisions of the white collar crime enhancement statutes to include cases where the felonious acts result in the loss of more than \$100,000.

PURPOSE OF BILL

According to the author's staff, a recent court ruling questioned whether a felony for failure to file tax return met the criteria of "taking" for purposes of the white collar crime enhancement statutes. The purpose of this bill is to clarify that the application of this statute to felony failure to file tax return cases is appropriate and consistent with the legislative intent of the statute.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2008, and be operative on or after that date. The bill includes provisions expressing legislative intent that the amendments are declaratory of existing law.

ANALYSIS

STATE LAW

California law contains a provision known as "The White Collar Crime Enhancement" law. In addition to any other sanctions imposed upon conviction, a person who meets specified criteria can be subject to additional terms of imprisonment or fines or both. To qualify for these enhancement provisions, the following must be in place:

- A person is convicted of two or more related felony acts in a single proceeding,
- The felony acts include elements of fraud or embezzlement,
- The felony acts involve a pattern of related felony conduct as defined, and
- The felony acts involve the taking of \$100,000 or more.

Under California tax law, any person that commits certain fraudulent acts made in connection with the filing of tax returns, or other documents required under the Personal Income Tax Law, can be guilty of a felony and upon conviction subject to a fine of not more than \$50,000 or imprisonment in state prison or both. Any person that willfully fails to file any return or supply information with intent to evade any tax can, upon conviction, be punished by imprisonment in the county jail not to exceed one year, or in the state prison, or by a fine of not more than \$20,000 or by both the fine and imprisonment.

| | | |
|---|---------------------------------------|-----------------|
| Brian Putler, FTB Contact Person (916) 845-6333 (Office) | Executive Officer Selvi Stanislaus | Date 9/11/07 |
|---|---------------------------------------|-----------------|

Any person that commits certain fraudulent acts related to obtaining or negotiating a tax refund can, upon conviction, be punished by imprisonment in the county jail not to exceed one year, or in the state prison, or by a fine of not to exceed \$50,000, or both the fine and imprisonment.

Program Background

Franchise Tax Board (FTB) refers investigation cases involving tax fraud to the local District Attorney (DA) for prosecution and assists in criminal prosecutions handled by the DAs for medical program fraud, elder abuse, grand theft, embezzlement, and other crimes. Tax charges are often added to such cases by the DA because evidence supporting the tax crimes is relatively straightforward to establish.

THIS BILL

This bill would clarify that the white collar crime enhancement provisions apply to cases where the felony acts result in the loss by another person or entity of more than \$100,000. The bill would also provide that the changes in the act are intended to be declaratory of existing law.

FISCAL IMPACT

This bill would not impact department costs.

ECONOMIC IMPACT

The provisions of this bill would not impact state income tax revenues.

VOTES

Assembly Floor – Ayes: 77, Noes: 0

Senate Floor – Ayes: 39, Noes: 0

Concurrence – Ayes: 77, Noes: 0

LEGISLATIVE STAFF CONTACT

Deborah Barrett
Franchise Tax Board
(916) 8454301
Deborah.Barrett@ftb.ca.gov

Brian Putler
Franchise Tax Board
(916) 845-6333
brian.putler@ftb.ca.gov